

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

SEAFORD PRESERVATION ASSOCIATES LLC  
Plaintiff Below,  
Appellee

VS

RONYELL ROBINSON  
Defendant Below,  
Appellant

§  
§  
§  
§  
§  
§  
§  
§  
§

C.A. No. JP17-18-004317

**TRIAL DE NOVO**

Submitted: December 6, 2018  
Decided: January 16, 2019

**APPEARANCES:**

David C Zerbato, Esquire appeared for Plaintiff  
Jayce R Lesniewski, Esquire appeared for Defendant

Alan G Davis, Chief Magistrate  
William P Wood, Justice of the Peace  
John Martin, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY  
COURT NO. 17**

**CIVIL ACTION NO: JP17-18-004317**

**SEAFORD PRESERVATION ASSOC VS RONYELL ROBINSON**

**ORDER ON TRIAL DE NOVO**

The Court has entered a judgment or order in the following form:

Plaintiff seeks possession of its federally subsidized rental unit based upon alleged rules violations in this landlord-tenant appeal de novo. Defendant disputes the basis for the claim averring, *inter alia*, that three late payments of rent and a rules violation for loitering on community property are not grounds for termination of the lease. A panel consisting of Chief Magistrate Davis, Judge Wood and Senior Judge Martin heard the case on November 20, 2018. The panel requested additional briefing to be submitted by the parties. This is the panel's decision after the consideration of the evidence and the supplemental briefing. For the reasons stated below, we find in favor of the defendant.

**Facts**

Plaintiff brought this action based upon a rules violation notice dated July 18, 2017. The notice stated that Defendant's son "was seen on camera and by management and security loitering around the property." Additionally, the letter informed Defendant of which parts of the lease were violated and that "this notice of violation is effective for one year. If you commit a substantially similar breach within one year, the landlord may rely on the initial notice to file an action for summary possession of your apartment." Plaintiff's witness, Caneeka Meekins-Dixon, testified to what she observed on the video. The video was not submitted as it was destroyed after thirty days – according to company policy at the time.

Subsequent to the rules violation, in January, February and March of 2018, Plaintiff sent notices for delinquent rent demanding payment within the statutorily required five days. None of these notices contained a warning that subsequent violations could result in termination of the lease. Defendant paid rent after each of the notifications. However, on April 27, 2018 Plaintiff sent a "60 Day Notice of Termination/Non Renewal" for the loitering violation, an alleged violation for "permitting a convicted felon to reside in your unit without authorization" and the three late payments. Plaintiff did not raise the allegation of an unauthorized guest in the course of this action.

**Argument**

Defendant does not specifically dispute any of the allegations brought by Plaintiff, but raises several legal grounds which defense counsel suggests, render the case unsustainable. First, Defendant posits that the lease between the parties states that "The lease may be terminated by management for serious or repeated violations of material terms of the lease. Such violations of material terms shall

include but not be limited to: Repeated late payments of rent or other charges due by the first of the month. Repeated late payments of rent are defined as paying the full month's rent after the 5<sup>th</sup> of the month four or more times in any twelve-month period." (House Rule 24). Plaintiff has shown that Defendant only had three late payments in a twelve-month period. Second, the lease and Plaintiff's notice of July 2017 state that, regarding the loitering violation, only a substantially similar breach of the lease within one year would constitute grounds for termination; late payment of rent is not a substantially similar breach as loitering. Third, assuming that the Court finds the prior legal arguments without merit, the loitering allegation should not be used as a violation because Plaintiff destroyed the video it should have preserved in anticipation of litigation, thus the Court should impose an adverse inference on the testimony of Plaintiff's witness. In support of this position, Defendant cites **Beard Research, Inc. v. Kates**, 981 A.2d 1175 (Del. Ch. 2009), **Sears Roebuck & Co. v. Midcap**, 893 A.2d 542 (Del. Supr. 2006), and **Shawe v. Elting**, 157 A.3d 142 (Del. Supr. 2017).

Plaintiff disputes Defendant's interpretation of the lease and denies that it had a duty to preserve the video. In support of its position, Plaintiff cites, among other cases, **Riverside Fund V, L.P.**, 2017 Del. Super. LEXIS 78, \*3 (Del. Super. Feb. 14, 2017) which holds "...that where the claim did not arise until months later, no duty to preserve evidence exists." In the case before us, more than nine months transpired after the loitering and before Plaintiff sent notice of its intent to terminate the lease on April 27, 2018.

## Discussion

Having heard the testimony and considered the evidence submitted during trial, this Court finds in favor of Defendant on two grounds. First, we find that the lease bifurcates or distinguishes the differences between repeated violations of material terms of the lease. Section 23 of the lease entitled Termination of the Tenancy states, in pertinent part:

23c. The Landlord may terminate this Agreement for the following reasons: (1) the Tenant's material noncompliance with the terms of this Agreement; ...The term material noncompliance with the lease includes: (1) one or more substantial violations of the lease; (2) repeated minor violations of the lease that (a) disrupt the livability of the project; (b) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities, (c) interfere with the management of the project, or (d) have an adverse financial effect on the project (3) failure of the tenant to timely supply all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies), and (4) Non-payment of rent or any other financial obligation due under the lease beyond any grace period permitted under State law. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law constitutes a minor violation.

House Rule 24. States:

The lease may be terminated by management for serious or repeated violations of material terms of the lease. Such violations of material terms shall include but not be limited to: Repeated late payment of rent or other charges due by the first of the month. Repeated late payments of rent are defined as paying the full month's rent after the 5<sup>th</sup> of the month four or more times in any twelve-month period; A fire resulting from carelessness, negligence, or unattended cooking (any fire directly caused by action (s) of tenant(s) or their guest(s)).

This language clearly establishes that late payment of rent is distinguishable from other infractions. There is nothing in the lease or the House Rules that establishes that one or more late payments of rent can be combined with other rules violations to constitute grounds for termination. Following Plaintiff's logic, one late payment of rent within twelve months of the loitering violation would be grounds for termination. We find this inconsistent with the plain language of the lease and note that we can find no case law which would support Plaintiff's suggestion to the contrary. Secondly, the Court finds that spoliation sanctions in this matter are warranted. In the **Riverside Fund V, L.P.** case previously mentioned the Superior Court stated:

The Delaware Courts have applied the following standard when addressing claims of spoliation- a party in litigation or who has reason to anticipate litigation has an affirmative duty to preserve the evidence that might be relevant to the issues in the lawsuit, and this duty can attach before litigation if a party knows that the evidence may be relevant to future litigation. Whether a person has reason to anticipate litigation depends on the facts and circumstances and whether these facts and circumstances would lead to a conclusion that litigation is imminent or should otherwise be expected. If a party intentionally fails to preserve such relevant evidence, a court may impose spoliation sanctions.

Plaintiff has cited **Riverside** in support of its position to show that, because the claim did not arise until months later, no duty to preserve existed. **Riverside** is distinguishable from the case before us in that the party accused of spoliation in **Riverside** testified that "the 'recording' he destroyed was not relevant or related to the fraud cross-claim against Mr. Shyamsundar, and at the time he destroyed the 'recording' he did not anticipate bringing a fraud cross-claim against Mr. Shyamsundar because the fraud claim did not accrue until months after he destroyed the 'recording.'" (**Riverside** at \*3).

In the instant case Plaintiff's agent's notice dated July 2017 denotes the usage of a camera in discovering the rules violation and informs the Defendant that if a similar breach occurs within a year, Plaintiff may rely on the loitering violation to file an action for summary possession. Clearly, Plaintiff's agent knew "that the evidence may be relevant to future litigation." In fact, Plaintiff could not sustain a case for a subsequent violation without proof of the first violation. Consequently, Plaintiff had a duty to preserve the video; that is to say it had a duty to make sure the video was not erased automatically. This duty existed for a period of one year; the time frame in which Plaintiff could have terminated the lease for a subsequent violation.

**Riverside** also points out that:

Sanctions are to serve three functions: to remediate; to punish, and to deter. The Court is to consider the following factors in determining the appropriate sanctions: (i) the culpability or mental state of the party that destroyed the evidence; (ii) the degree of prejudice suffered by the complaining party; and (iii) the availability of lesser sanctions that would avoid unfairness to the complaining party while, at the same time, serve as a sufficient penalty so as to deter future conduct. While Delaware courts have wide latitude to fashion an appropriate remedy for the spoliation of evidence, the remedy must be tailored to the degree of culpability of the spoliator and the prejudice suffered by the complaining party. (**Riverside** at \*2)

In the case at bar, Defendant seeks an adverse inference for Plaintiff's breach. We find this an appropriate remedy considering the aforementioned guidelines. As a result, had this Court accepted Plaintiff's argument that the lease permits termination upon a finding of a rules violation and three late payments, we would still find in favor of Defendant because Plaintiff would have failed to prove the rules violation with the imposition of the adverse inference sanction.

Accordingly, we find in favor of the Defendant, Ronyell Robinson and against the Plaintiff, Seaford Preservation Associates, LLC

IT IS SO ORDERED 16th day of January, 2019

/s/William P Wood  
For the Three Judge Panel



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).